

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TERRANCE JON IRBY,

Plaintiff,

v.

JACK MORNER, et al.,

Defendants.

CASE NO. 2:23-cv-1927

ORDER ADOPTING REPORT  
AND RECOMMENDATION AND  
OVERRULING OBJECTIONS

This matter comes before the Court on the Report and Recommendation of the Honorable David W. Christel, Chief United States Magistrate Judge, and Plaintiff Terrance Jon Irby's objections to the Report and Recommendation ("R&R"). Dkt. Nos. 4, 6. Judge Christel found that Irby had incurred three "strikes" under 28 U.S.C. § 1915(g) and that he failed to show he faces imminent danger of serious physical injury. Judge Christel therefore recommended that Irby's application to proceed in forma pauperis (IFP) be denied.

After a de novo review of Irby's application, the R&R, Irby's objections, and being otherwise fully informed, the Court adopts the R&R and DENIES Irby's IFP application for the reasons stated below.

1 Irby is incarcerated at the Monroe Correctional Complex-IMU ("MCC"). He  
2 filed this Section 1983 lawsuit in December 2023, alleging that he was transferred  
3 to MCC in 2021 and that the placement of the cuff ports at MCC is low and hurts  
4 his lower back and knees. Dkt. 1-1. He also claims the handcuffs have caused  
5 permanent injury to his wrists.

6 Irby applied to proceed IFP, but "prisoners who have repeatedly brought  
7 unsuccessful suits may entirely be barred from IFP status under the three-strikes  
8 rule." *Andrews v. Cervantes*, 493 F.3d 1047, 1051-52 (9th Cir. 2007). The R&R  
9 recounts three prior lawsuits by Irby, Dkt. No. 4 at 3, so his only chance at  
10 proceeding IFP is if he can show that he is under imminent danger of serious  
11 physical injury since the three-strikes rule would not apply in that instance. 28  
12 U.S.C. § 1915(g).

13 In his objection to the R&R, Irby raises the same or similar conclusory  
14 statements about imminent danger that the R&R rejects. Indeed, reviewing the  
15 matter de novo, the Court finds that Irby has not established serious physical  
16 danger which is "ready to take place" or "hanging threateningly over [his] head."  
17 *Cervantes*, 493 F.3d at 1056.

18 Thus, the Court agrees with the R&R's conclusion that Irby has incurred at  
19 least three strikes under 42 U.S.C. § 1915(g) and has not shown that the imminent  
20 danger exception applies.

21 For these reasons, the Court ORDERS:

22  
23 1. The Court ADOPTS the Report and Recommendation. Dkt. No. 4.

1 2. Irby's Application to Proceed IFP is DENIED. Irby must pay the \$405  
2 filing fee within thirty (30) days of the date of this Order if he wishes to  
3 proceed with this lawsuit. If Irby does not timely pay the filing fee, the  
4 Clerk's Office is directed to terminate this action.

5 3. The Clerk is directed to send copies of this Order to the parties and Chief  
6 Magistrate Judge Christel.

7  
8 Dated this 26th day of April, 2024.

9 

10 \_\_\_\_\_  
11 Jamal N. Whitehead  
12 United States District Judge  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23